

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	2
Questions presented.....	2
Statutes and rules involved.....	3
Statement.....	3
Argument.....	7
Conclusion.....	12
Appendix.....	13

CITATIONS

Cases:

<i>Craig v. The Hartford</i> , 1 McAll. 91, Fed. Case No. 3,333.....	8
<i>Liberty Mutual Insurance Co. v. Pillsbury</i> , October Term, 1946, No. 128.....	8, 10
<i>O'Donnell v. Great Lakes Co.</i> , 318 U. S. 36.....	9
<i>Parker v. Motor Boat Sales</i> , 314 U. S. 244.....	9
<i>Royal Indemnity Co. v. Puerto Rico Cement Corp.</i> , 142 F. 2d 237, certiorari denied, 323 U. S. 756.....	3
<i>Seas Shipping Co., Inc. v. Sieracki</i> , October Term, 1945, No. 365, decided April 22, 1946.....	10

Statutes:

Act of May 17, 1928, c. 612, 45 Stat. 600, D. C. Code, 1940, Title 36, c. 5, § 1.....	9
Defense Bases Act of August 16, 1941, c. 357, 55 Stat. 622 and 56 Stat. 1035, 42 U. S. C. Supp. V, 1651.....	4, 13
Longshoremen's & Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. 901 <i>et seq.</i>	4, 5

Miscellaneous:

3 Moore, <i>Federal Practice</i> , pp. 3044-3045 and Supp. 1945 pp. 50-54.....	11
Federal Rules of Civil Procedure:	
Rule 12.....	12
Rule 41 (b).....	11, 15
Rule 50.....	11
Rule 52 (a).....	11
Rule 58.....	6, 7, 15
Rule 79 (a).....	6, 7, 15
Rule 81 (a) (6).....	9, 16



In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 158

**J. E. HADDOCK, LIMITED, AND UNITED PACIFIC
INSURANCE COMPANY, PETITIONERS**

v.

**WARREN H. PILLSBURY, DEPUTY COMMISSIONER,
AND HUGH A. VORIS, ASSISTANT DEPUTY COM-
MISSIONER, UNITED STATES EMPLOYEES' COMPEN-
SATION COMMISSION, AND ADELA F. MUCH**

***ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT***

**BRIEF FOR RESPONDENTS PILLSBURY, DEPUTY COM-
MISSIONER, AND HUGH A. VORIS, ASSISTANT DEPUTY
COMMISSIONER, IN OPPOSITION**

OPINIONS BELOW

The opinion of the District Court of the Northern District of California, Southern Division (R. 18-19) is reported at 60 F. Supp. 806. A memorandum decision of the United States Circuit Court of Appeals for the Ninth Circuit on dismissal of the appeal is not included in the

record but is reported at 154 F. 2d 1018. The opinion of the Circuit Court of Appeals on petition for rehearing (R. 199-203) is not yet reported.¹

JURISDICTION

The decree of the Circuit Court of Appeals, dismissing the appeal, was entered on April 5, 1946 (R. 194).² A petition for rehearing was filed on April 17, 1946. The petition for rehearing was denied by an opinion filed on May 2, 1946. The petition for certiorari was filed on June 10, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTIONS PRESENTED

1. Whether a district court proceeding to review a compensation order under the provisions of the Longshoremen's and Harbor Workers' Act, as made applicable to employees at defense base areas by the Defense Bases Act, is a proceeding which must be brought on the admiralty side of

¹ The memorandum decision on dismissal of the appeal is dated April 5, 1946. 154 F. 2d 1018. On April 25, 1946, the court below rendered an opinion on a petition for rehearing (R. 195, 199) and, on the same day, ordered the district court clerk to certify to it certain civil docket entries in the case (R. 195). On receipt of these district court docket entries, the court below withdrew its April 25 opinion on rehearing and substituted the opinion of May 2, 1946, which appears in the record (R. 196-198, 199-203).

² The record contains a district court order signed by Judge Roche (R. 195-196) which does not appear to be part of this case.

the court and governed by admiralty rules of procedure.

2. Whether, in such a proceeding, the district court is required by Rule 52 (a) of the Federal Rules of Civil Procedure to make findings of fact.

3. Whether, in a district court proceeding to review a compensation order under the Defense Bases Act, an order of dismissal signed by the district judge, filed as part of the record in the case and duly noted in the district court civil docket, is a final order.

4. Whether the time permitted for appeal to a circuit court of appeals must be calculated from the date of the notation of such order of dismissal in the district court civil docket, absent a petition for rehearing or other proceeding subsequent to judgment in the district court seeking to alter the rights already adjudicated.

STATUTES AND RULES INVOLVED

Relevant statutes and rules of procedure are set forth in the Appendix, *infra*, pp. 13-16.

STATEMENT

On October 18, 1943, Robert Much, while employed by petitioner Haddock on a United States public works contract in Canada, sustained personal injury in the course of his employment which resulted in his death on the same day (R. 11-12). On December 9, 1943, the father and mother of the deceased filed claims for compensa-

tion (R. 36-37, 40-41) in accordance with the provisions of the Longshoremen's and Harbor Workers' Compensation Act (Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. 901 *et seq.*) as made applicable to employees at defense base areas and other places by the Defense Bases Act of August 16, 1941, 55 Stat. 622, 42 U. S. C. Supp. V, 1651-1654, *infra*, pp. 13-14 (R. 10-11). On January 25, 1944, a claim for compensation was also filed by respondent Adela Much, widow of the deceased, under the Defense Bases Act (R. 44-45). Petitioners resisted the claims of the parents on the ground that they were not dependents of the deceased, and the claim of respondent Much on the ground that she was not his widow within the meaning of the statute (R. 38-39, 42-43, 46-47, 50-51). After an unsuccessful effort to settle the claims (R. 50), a consolidated hearing was held on May 24, 1944, before respondent Voris, Assistant Deputy Commissioner (R. 48-180). Findings of fact were made by respondent Voris on June 29, 1944 (R. 11-13) and a compensation order was entered in favor of the claimants (R. 13-14).

This proceeding to review the compensation order in favor of respondent Much was instituted by complaint filed on July 28, 1944, in the District Court of the Northern District of California, Southern Division (R. 2-9, 196) in accordance with the provisions of Section 21 (b) of the

Longshoremen's Act (R. 2-3).³ On October 13, 1944, a motion to dismiss the complaint was made on behalf of the Deputy Commissioner and the Assistant Deputy Commissioner on the grounds that the complaint failed to state a claim upon which relief could be granted, that the Assistant Deputy Commissioner's findings of fact were supported by evidence and were, accordingly, final and conclusive, and that the compensation order was in accordance with law (R. 17-18).⁴ The case was heard in the district court on January 22, 1945 (R. 197). On March 15, 1945, the district judge held that the Assistant Deputy Commissioner's finding, that respondent Much was the deceased's widow within the meaning of the statute, was supported by evidence and was not to be disturbed on review (R. 18-19). Accordingly, he ordered the complaint dismissed (R. 19). On the same day, the order of dismissal, duly signed by the district judge (R. 19), was filed as part of the record in the case and the district court clerk made the required notation in the docket (R. 197).

³ The procedure for judicial review of compensation awards contained in Section 21 (b) is applicable to awards made under the Defense Bases Act of August 16, 1941, *infra*, pp. 13-14. The district court is empowered to set aside the compensation order " * * * if not in accordance with law * * *." Section 21 (b) of the Longshoremen's Act.

⁴ A certified transcript of the entire record before the Assistant Deputy Commissioner was before the district court as part of the complaint (R. 8, 17, 32-35, 196).

On June 14, 1945, prepared findings of fact were signed by the district judge and filed by the district court clerk (R. 20-23). On August 27, 1945, a prepared formal judgment was signed by the district judge and filed by the clerk (R. 197).⁵

Petitioners, by a notice of appeal filed September 14, 1945, sought to appeal from the "judgment" of August 27, 1945 (R. 25). Respondents suggested lack of jurisdiction to the court below on the ground that the dismissal order of March 15, 1945, was final and that petitioners' time for appeal had expired on June 15, 1945. This jurisdictional objection was sustained and the appeal was dismissed on April 5, 1946 (R. 194). On April 25, 1946, the court below rendered an opinion on petition for rehearing (R. 199) which held that the signed order of March 15, 1945, was a final disposition of the case in the district court and that it would be presumed that the district court clerk had made the required notation in

⁵ Contrary to petitioners' assertion (Pet. 4), the district court clerk did not make the notation under Rule 79 (a), F. R. Civ. P., *infra*, pp. 15-16, as to the formal judgment of August 27, 1945 (R. 197). The docket merely shows that the August 27 "judgment" was filed (R. 197). The brief notation required by Rule 79 (a) was made as to the dismissal order of March 15, 1945 (R. 197).

Petitioners also assert that the judgment of August 27 was prepared and submitted pursuant to Rule 58 of the Federal Rules of Civil Procedure (Pet. 3-4). Since the final decision in the case was an order of dismissal, no settlement or approval of a form of judgment was required by Rule 58.

the civil docket (R. 200). To avoid resting its opinion on a presumption (R. 200), the court below ordered the district court clerk to certify to it the pertinent civil docket entries (R. 195). After receiving these certified docket entries on April 26, 1946 (R. 196-198), the court below withdrew its opinion of April 25 and rendered its opinion of May 2, 1946 (R. 198-203). The court below rejected petitioners' contention in their application for rehearing that the question of entry of judgment in the district court had to be decided by treating the proceeding as brought (and, presumably, the appeal taken) in admiralty (R. 200). The entry of final order or judgment in accordance with Rule 58 and Rule 79 (a) of the Federal Rules of Civil Procedure was recognized as the decisive factor in determining whether the appeal was timely (R. 199, 201-203). The court below held that the final order of dismissal of March 15, 1945, was duly noted in the district court docket on the same day and that, accordingly, judgment was entered on that day pursuant to Rule 58 for the purpose of calculating petitioners' time to appeal (R. 203).

ARGUMENT

The district court order of dismissal of March 15, 1945, was clearly a final decision, appealable to the court below. Petitioners' time within which to appeal began to run on the same day, the date of notation of the dismissal order in the district

court civil docket, and expired on June 15, 1945. Accordingly, petitioners' appeal to the court below, taken on September 14, 1945, was out of time. The situation involved and the question upon which review is herein sought are identical with *Liberty Mutual Insurance Co. v. Pillsbury*, No. 128, this Term. For the reasons set forth in our brief in opposition in the *Liberty Mutual Insurance* case, we submit that the action of the court below herein, dismissing the appeal, was correct and that no further review is warranted. Certain contentions advanced by petitioners herein and not discussed in the *Liberty Mutual* case are briefly noted below.

1. Petitioners suggest that the compensation order here involved was made under the Longshoremen's Act, and that, accordingly, a district court proceeding to review the order is a suit in admiralty and necessarily “* * * subject to the principles of admiralty jurisprudence * * *” (Pet. 5). From this, they urge that the dismissal order of March 15 could not be considered a final decision because it failed to provide for the taxation of costs (Pet., p. 11).⁶ In answer to this argument, first, it should be noted that the compensation award here involved

⁶ That the failure to provide for the taxation of costs or for other ministerial matters has never been held to affect the character of an order as final, is shown at p. 13 of our brief in opposition in the *Liberty Mutual* case. The same rule applies in admiralty. *Craig v. The Hartford*, 1 McAll. 91, Fed. Case No. 3,333 (C. C. D. Cal.).

was not made under the Longshoremen's Act as such, but under the Defense Bases Act, *supra*. The deceased employee was killed by an overturned truck which he was driving (R. 11-12) while employed by petitioner Haddock on a public works contract of the United States in Canada, namely, the Alaska Highway (R. 50, 11). None of the basic questions of exclusive federal maritime jurisdiction or of the nature of an exercise of federal power over navigable waters, which arose prior to the passage of the Longshoremen's Act and which still arise under that Act, are involved herein. Cf. *Parker v. Motor Boat Sales*, 314 U. S. 244; *Royal Indemnity Co. v. Puerto Rico Cement Corp.*, 142 F. 2d 237 (C. C. A. 1), certiorari denied, 323 U. S. 756. In the Defense Bases Act, Congress merely utilized the existing framework of the Longshoremen's Act to provide a uniform compensation scheme for military areas and other places occupied and used by the Government for military purposes. *Royal Indemnity Co. v. Puerto Rico Cement Corp.*, *supra*, at 239. It has similarly used the same scheme to provide a compensation law for the District of Columbia. Act of May 17, 1928, c. 612, 45 Stat. 600, D. C. Code, 1940, Title 36, c. 5, § 1. Second, even if this had been a proceeding to review a Longshoremen's Act award, it was governed by the Federal Rules of Civil Procedure. Rule 81 (a) (6). The power of Congress to prescribe these rules for judicial review of Longshoremen's Act awards cannot be doubted. *O'Donnell v. Great Lakes Co.*, 318 U. S.

36, 40. Third, even if petitioners' right to review the compensation award herein could be considered a right peculiar to the maritime law, it is well settled that such a right may be enforced on the law side of the court. *Seas Shipping Co., Inc. v. Sieracki*, No. 365, Oct. T., 1945, decided April 22, 1946, p. 2 of slip opinion. Finally, petitioners chose to institute their review proceeding on the civil side and sought to appeal to the court below by the simple filing of a notice of appeal. Apparently, petitioners wish to limit the application of the admiralty jurisprudence for which they here contend to a consideration of the entry of judgment on the final decision of the district court on March 15, 1945, in order that they may extend the period for appeal.

2. Petitioners urge a right to independent findings of fact by the district judge and contend that the decision below deprives them of this right;¹ here again, they rely on the Federal Rules of Civil Procedure rather than on the Admiralty Rules. As we have indicated in our Brief in Opposition in the *Liberty Mutual* case, No. 128, we do not believe that independent findings of fact by district judges in review proceedings of this type are

¹ The status of respondent Much as deceased's widow was the only point on which petitioners sought review in the district court and as to which they sought to appeal (R. 6, 188-189). As to this point, the "finding of fact" by the district judge was merely a recital that the Assistant Deputy Commissioner had found that she was the widow of the deceased within the meaning of the statute (R. 21).

proper or that petitioners have a "right" to such findings (Br. in Opp., pp. 7-9).*

One facet of petitioners' findings-of-fact argument herein should be noticed. Petitioners describe the motion made on behalf of respondents Pillsbury and Voris in the district court as a motion to dismiss "* * * under Rule 41 of the Federal Rules of Civil Procedure * * * on the ground that upon the facts and the law the complainants had shown no right to relief * * *" (Pet. 3). From this, they argue that the "determinative question" is whether a district court must make findings of fact under Rule 52 (a) of the Federal Rules of Civil Procedure in granting a motion to dismiss under Rule 41 (b) (Pet. 9). The motion made on behalf of respondents, Pillsbury and Voris herein is clearly not a motion under Rule 41 (b). A motion under Rule 41 (b) *infra*, p. 15, is made in a jury or non-jury district court trial upon the completion of complainant's evidence. It is in the nature of a motion to order an involuntary nonsuit and, in jury trials, supplements the motion for a directed verdict which is provided for by Rule 50. 3 Moore, *Federal Practice*, pp. 3044-3045; *id.*, Supp. 1945, pp. 50-54. The motion to dismiss herein was addressed to the complaint, including the certified transcript of the proceedings before the Assistant Deputy Commis-

* None of the cases cited by petitioners in the conflict which they assert as to findings of fact by district judges involves review of compensation proceedings (Pet. 9-10).

sioner (R. 17), and was made prior to any hearing. It brought to issue the single question of law involved in the proceeding, namely, whether the compensation order under attack was in accordance with law, by moving to dismiss on the ground that the complaint did not state a claim upon which relief could be granted. Obviously, such a motion was not under Rule 41 (b) but was a motion to dismiss under Rule 12.

CONCLUSION

The decision below is correct and there is no conflict. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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JULY 1946.

APPENDIX

1. STATUTES

A. The Defense Bases Act of August 16, 1941, c. 357, Sec. 1, as amended, 55 Stat. 622 and 56 Stat. 1035, 42 U. S. C., Supp. V, 1651, provides in pertinent part:

That (a) except as herein modified, the provisions of the Longshoremen's and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stat. 1424), as amended, shall apply in respect to the injury or death of any employee engaged in any employment—

(1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or

(2) upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including Alaska; the Philippine Islands; the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or

(3) upon any public work in any Territory or possession outside the continental United States (including Alaska; the Philippine Islands; the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in employment at such place under the contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor

or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1), (2), and (3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the payment of compensation and other benefits under the provisions of this Act, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract; irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provides the transportation or the cost thereof.

2. FEDERAL RULES OF CIVIL PROCEDURE

A. Rule 41 (b) provides:

(b) *Involuntary dismissal: Effect thereof.*—For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

B. Rule 58 provides in pertinent part:

Entry of Judgment.—* * * When the court directs the entry of a judgment that a party recover only money or costs or that there be no recovery, the clerk shall enter judgment forthwith upon receipt by him of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry.

C. Rule 79 (a) provides:

(a) *Civil Docket.*—The clerk shall keep a book known as “civil docket” of such

form and style as may be prescribed by the Attorney General under the authority of the Act of June 30, 1906, c. 3914, § 1 (34 Stat. 754), as amended, U. S. C., Title 28, § 568, or other statutory authority, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

D. Rule 81 (a) (6), as amended on December 28, 1939, provides in pertinent part:

These rules * * * apply to proceedings for enforcement or review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, sections 18, 21 (44 Stat. 1434, 1436), U. S. C., Title 33, Sections 918, 921, except to the extent that matters of procedure are provided for in that Act.